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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,043	10/03/2003	Gary A. Foos	14222/YOD ITWO:0070	1647
7590	12/13/2005		EXAMINER	
Patrick S. Yoder FLETCHER YODER P.O. Box 692289 Houston, TX 77269-2289			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/679,043

Applicant(s)

FOOS ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 14-19, 31 and 36-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31 is/are allowed.
- 6) ☒ Claim(s) 1-8 and 36-40 is/are rejected.
- 7) ☒ Claim(s) 14-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination (“RCE”) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's RCE and accompanying amendment filed on 12/1/2005 have been entered.

### ***Claim Objections***

2. Claim 14 is objected to because of the following informalities: In line 9, the term “vale” should read “valve”. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 8, 36, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,666,479 to Clinton (“Clinton”).

Clinton discloses in the specification and Figs. 1-5 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 1-6, 8, 36, and 39. In particular, Clinton shows a torch (10) having a torch butt with an attached handle portion (17) (see Fig. 1), a valve assembly including valve block (22), valve member (23) and valve operating mechanism (including at least portions 35, 37, 38, and 42) operable to control a first flow of fluid through the torch butt (see Fig. 2 and col. 3, lines 25-36). The torch butt includes a dedicated passage (24 and 25) for the flow of cutting oxygen. A lever (21) selectively securable to pivot about first and second portions of the torch butt.

The valve operating mechanism, including lever (21) is arranged in a first orientation relative to the torch butt and may be moved to a second portion that is inverted from the second position (see Fig. 1 and col. 4, line 46 through col. 5, line 15). Further, valve member (23) is shown as a separate portion from valve block (22) (note distinct hatching, Figs. 2-4). This valve member (23) slides within valve block/body (22) in order to open and close the valve (see col. 3, line 37 through col. 4, line 26). Though this valve member (23) is not required to be removed to invert the orientation of the valve operating mechanism, this valve member (23) is capable of movement both in and out of the central bore (24) of valve block (22). Accordingly, this valve member is capable of being removed from the bore, and is therefore properly regarded as removable. Further, this valve member (23) is shown in Figs. 2-4 to be symmetrical, and thus when removed and reinserted in a second mutually opposed position would enable the torch to function as normal.

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Clinton further discloses that the torch includes the necessary sealing and sealing means (see col. 3, lines 37-64), a second throttling valve assembly (16), and handle portion (17) has an upper radius and a lower radius that are uniform along the length of the handle (see Fig. 5).

In regard to claim 36, Clinton clearly shows that the valve body includes first and second inlets (note inlets 14 and 15, col. 3, lines 12-36 and Fig. 5). As noted above, the valve member (23) is regarded as being removable from and operably positionable in the valve block/body (22) in two mutually opposed positions. The flow of cutting oxygen is passed through passageway (25) and the valve member (23) functions to control the flow of fluid into the passageway.

5. Alternatively, claims 1-6, 8, and 36-40 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,709,446 to Miller ("Miller").

In regard to the recitation in the preamble of a "torch," a preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claims does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Further, if the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction. *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165 (Fed. Cir. 1999); see also MPEP 2111.02. In this case, the body of the

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each of the claims do not rely on the preamble for completeness and state merely that the intended use of the invention. Accordingly, the recitation of “torch” is not considered a limitation in claim construction of these claims.

Miller discloses in the specification and Figs. 1-11 a portable tool and control valve as described in applicant's claims 1-6, 8, and 36-40. In particular, Miller shows a tool includes a tool butt (62), a valve body (11) including a valve assembly (see components within valve housing 43) with valve (see at least Fig. 2). The valve assembly is removable from and positionable in the tool butt in two mutually opposed positions (see at least Figs. 2 and 3 and col. 3, lines 54-70). Lever (64) is also inverted in the same manner as the valve assembly. The valve assembly includes a dedicated passageway (see bore 44) that receives a fluid flow when the valve assembly is the opposed positions.

In regard to claim 36, Miller shows a first inlet that would be capable of receiving fuel (note inlet 36 and also the inlet for tube 77 in the embodiment of Figs. 6-11) and a second inlet (at least 58).

In regard to claim 37, the valve is actuated in a direction askew to the longitudinal axis of the tool transitions.

In regard to claim 38, note the control of fluid through passageways (39 and 40).

In regard to claim 39, the inlet (at least 58) is configured to receive any pressurized gas (see col. 2, lines 6-9).

In regard to claim 40, note at least passageway (35).

*Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clinton as applied to claim 1 above in view of U.S. Patent No. 5,571,427 to Dimock et al. ("Dimock").

Clinton discloses all the limitations of claim 7 except that the handle has a skull-shaped cross section.

Dimock teaches a handle for a torch in the same field of endeavor as both applicant's invention and Clinton. In Dimock the torch includes a handle (16) that has a D/skull shaped cross section (see Fig. 6).

Therefore, in regard to claim 7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the torch handle of Clinton to incorporate the D/skull shape of Dimock as this shape desirably provides a better ergonomic fit and better gripping surface for the hand of the operator and reduces the wasted space associated with rounded handles (see Dimock, col. 5, lines 11-15).

9. Alternatively, claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller as applied to claim 1 above in view of U.S. Patent No. 5,571,427 to Dimock et al. (“Dimock”).

Miller discloses all the limitations of claim 7 except that possibly that the handle has a skull-shaped cross section.

Dimock teaches a handle for a tool in the same field of endeavor as both applicant's invention and Miller. In Dimock the torch includes a handle (16) that has a D/skull shaped cross section (see Fig. 6).

Therefore, in regard to claim 7, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the torch handle of Miller to incorporate the D/skull shape of Dimock as this shape desirably provides a better ergonomic fit and better gripping surface for the hand of the operator and reduces the wasted space associated with rounded handles (see Dimock, col. 5, lines 11-15).



*Allowable Subject Matter*

10. Claims 14-19 and 31 are allowable over the prior art. However, note minor spelling objection to claim 14 above.

*Response to Arguments*

11. Applicant's arguments filed 12/1/2005 regarding claims 1-8 and 36-40 have been fully considered but they are not persuasive.

In regard to applicant's arguments as to lack of a removable valve in Clinton, as noted above, the examiner considers that the valve member (23) is properly regarded as removable.

In regard to applicant's arguments regarding claim 36, this are not persuasive. As noted, above Miller clearly shows the recited passageway. Further, Clinton has also been applied to claim 36, as this reference also shows the recited structure including the passageway.

Accordingly, applicant's claims 1-8 and 36-40 are not considered to distinguish over the prior art of record.

*Conclusion*

12. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.


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13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg, can be reached at (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
December 8, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
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